



# Air Weapons and Licensing (Scotland) Act 2015

2015 asp 10

## PART 3

### CIVIC LICENSING

#### *Sexual entertainment venues*

#### **76 Licensing of sexual entertainment venues**

- (1) The 1982 Act is amended as follows.
- (2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—
  - “(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.
- (3) After section 45 insert—

#### **“45A Licensing of sexual entertainment venues: interpretation**

- (1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).
- (2) “Sexual entertainment venue” means any premises at which sexual entertainment is provided before a live audience for (or with a view to) the financial gain of the organiser.
- (3) For the purposes of that definition—
  - “audience” includes an audience of one,
  - “financial gain” includes financial gain arising directly or indirectly from the provision of the sexual entertainment,
  - “organiser”, in relation to the provision of sexual entertainment in premises, means—

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- (a) the person (“A”) who is responsible for—
    - (i) the management of the premises, or
    - (ii) the organisation or management of the sexual entertainment, or
  - (b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,
- “premises” includes any vehicle, vessel or stall but does not include any private dwelling to which the public is not admitted,
- “sexual entertainment” means—
- (a) any live performance, or
  - (b) any live display of nudity,
- which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).
- (4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—
- (a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,
  - (b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.
- (5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.
- (6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.
- (7) The following are not sexual entertainment venues—
- (a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),
  - (b) such other premises as the Scottish Ministers may by order specify.
- (8) An order under subsection (7)(b) may make different provision for different purposes.
- (9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.
- (10) For the purposes of subsection (9)—
- (a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and
  - (b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.
- (11) The Scottish Ministers may by order provide for—
- (a) descriptions of performances, or

(b) descriptions of displays of nudity,  
which are not to be treated as sexual entertainment for the purposes of this section.

(12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

#### **45B Licensing of sexual entertainment venues**

- (1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.
- (2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.
- (3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.
- (4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.
- (5) The notice must—
  - (a) state the general effect of Schedule 2 (as modified for the purposes of this section), and
  - (b) be published electronically or in a newspaper circulating in the local authority’s area.
- (6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—
  - (a) references to a sex shop are to be read as references to a sexual entertainment venue,
  - (b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,
  - (c) in paragraph 1—
    - (i) in sub-paragraph (b)—
      - (A) the word “or” immediately following paragraph (i) is omitted,
      - (B) paragraph (ii) is omitted, and
    - (ii) sub-paragraph (c) is omitted,
  - (d) in paragraph 7—
    - (i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (3A),” and
    - (ii) after sub-paragraph (3) insert—

“(3A) If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.

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- (3B) Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.
- (3C) The applicant must also, not later than 7 days after the date of the application—
- (a) send a copy of the application to each person or body listed in the local authority’s determination under sub-paragraph (3D), and
  - (b) submit to the local authority a certificate stating that the applicant has complied with this sub-paragraph.
- (3D) For the purposes of sub-paragraph (3C), a local authority must—
- (a) from time to time determine the persons or bodies who must receive a copy of the application, and
  - (b) publicise the determination in such manner as they consider appropriate.”
- (e) in paragraph 9—
- (i) in sub-paragraph (5)(c)—
    - (A) after the word “in” insert “the local authority’s area or”,
    - (B) after the word “for” insert “their area or”,
  - (ii) after sub-paragraph (5) insert—
 

“(5A) For the purposes of sub-paragraph (5)(c), a local authority must—

    - (a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and
    - (b) publicise the determination in such manner as they consider appropriate.”
  - (iii) after sub-paragraph (6) insert—
 

“(6A) A local authority may refuse an application for the grant or renewal of a licence despite the fact that a premises licence under Part 3 of the Licensing (Scotland) Act 2005 is in effect in relation to the premises, vehicle, vessel or stall to which the application relates.”
- (f) in paragraph 12(2)(b), for “shorter” substitute “other”,
- (g) in paragraph 19(1)(e), for the words from “without” to the end of paragraph (e) substitute “knowingly permits any person under the age of 18 to enter the sexual entertainment venue—
- (i) at a time when sexual entertainment is being provided, or
  - (ii) without reasonable excuse, at any other time,” and
- (h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “45B”.
- (7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.

#### **45C Statements of policy in relation to sexual entertainment venues**

- (1) This section applies where a local authority passes a resolution under section 45B(1).
  - (2) The local authority must prepare a statement of their policy with respect to the exercise of their functions in relation to the licensing of sexual entertainment venues (a “SEV policy statement”).
  - (3) In preparing a SEV policy statement, a local authority must—
    - (a) consider the impact of the licensing of sexual entertainment venues in their area, having regard, in particular, to how it will affect the objectives of—
      - (i) preventing public nuisance, crime and disorder,
      - (ii) securing public safety,
      - (iii) protecting children and young people from harm,
      - (iv) reducing violence against women, and
    - (b) consult such persons or bodies as they consider appropriate.
  - (4) The local authority must publish the SEV policy statement at the same time and in the same manner as they publish the notice of the resolution under section 45B(4).
  - (5) The local authority must—
    - (a) from time to time review the SEV policy statement and make such revisions as they consider appropriate (if any), and
    - (b) publish the revised statement in such manner as they consider appropriate.
  - (6) Subsection (3) applies to a review of a SEV policy statement as it applies to preparing such a statement.
  - (7) In exercising their functions in relation to the licensing of sexual entertainment venues, a local authority must have regard to their SEV policy statement or revised statement.
  - (8) In this section—
    - “children” means persons under the age of 16,
    - “young people” means persons aged 16 or 17.”.
- (4) The title of Part 3 becomes “**Control of sex shops and sexual entertainment venues**”.